IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.3845 OF 2006

Shri Pandharinath Tukaram Pathare
and ors. .. Petitioners.

Vs

1. Shri Ulhas Namdev Kodre and ors .. Respondents.

Mr A.B.Avhad, for the petitioners.
Mr P.S.Dani, for respondent no.1.

CORAM : D.B.BHOSALE,J.
DATE : 03.10.2006

PC:

1. Heard the learned counsel for the parties.

2. By this writ petition, the petitioners have impugned the order dated 16.2.2006, by which the application filed by the respondents-plaintiffs seeking the amendment under Order 6, Rule 17 of CPC has been allowed. The amendment was opposed solely on the ground of limitation. The court, while allowing the amendment, has categorically recorded a finding that the limitation, being a mixed question of law and fact, can be decided during trial. Keeping the issue of limitation open, the learned Judge has allowed the amendment. Mr.Avhad, learned counsel for the petitioners, placed reliance upon the judgment of Supreme Court in Radhika Devi Vs Bajrangi Singh and ors, AIR 1996 Supreme Court 2358 in support of his contention that the court below ought to have rejected the

amendment on the ground of limitation. In view of the peculiar facts and circumstances of the case and considering that the amendment has already been carried out and that the petitioners have approached this court after about four months, I am not inclined to interfere with the order impugned. The Court below has rightly allowed the application for the reasons stated in the order, which warrants no interference by this Court under Article 227 of the Constitution of India. The writ petition is dismissed.

(D.B.BHOSALE,J.)